

Decision **DRAFT DECISION OF ALJ PULSIFER** (Mailed 4/5/2004)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the
Commission's Own Motion into Competition for
Local Exchange Service.

Rulemaking 95-04-043
(Filed April 26, 1995)

Order Instituting Investigation on the
Commission's Own Motion into Competition for
Local Exchange Service.

Investigation 95-04-044
(Filed April 26, 1995)

O P I N I O N

This decision denies the Petition for Modification of Decision (D.) 03-11-022, filed on January 22, 2004, by the Joint Wireless Carriers¹ (JWCs). In D.03-11-022, the Commission authorized a geographic split of the 909 area code. By their Petition, the JWCs ask the Commission to modify the implementation schedule set forth so that numbers from the new 951 area code will be available as of October 30, 2004, instead of February 28, 2005.

D.03-11-022 found that a "new area code [in the 909 NPA] is required to ensure a continued supply of numbering resources to serve customers in the region, and to relieve the impending exhaustion of prefix codes."² The JWCs

¹ For purposes of the Petition, the Joint Wireless Carriers include the following: Cingular Wireless LLC, Nextel of California, Inc., Omnipoint Communications, Inc. dba T-Mobile, Sprint PCS, and Verizon Wireless.

² D.03-11-022, p. 2.

claim, however, that the area code relief plan adopted by the Commission in D.03-11-022 is flawed because the remaining numbering resources cannot meet the current demand for numbers, and the 909 Number Planning Area (NPA) will exhaust well before the area code relief is ever implemented. The North American Numbering Plan Administrator (NANPA) currently projects that the 909 NPA will exhaust by the end of the second quarter of this year. Even with the voluntary acceptance of numbers of adjacent rate centers by wireless carriers and consumers, the JWCs claim the 909 NPA will completely exhaust in the October 2004 timeframe. The NANPA's most recent exhaust data, as cited by the JWCs, forecasts that the 909 NPA will exhaust in the second quarter of 2004.³ D.03-11-022, however, does not make new numbering resources available until February 2005. Accordingly, the JWCs seek modification of the implementation schedule in D.03-11-022 to limit the time in which the NPA is exhausted and consumers are denied their choice of service providers. Without modification of the schedule, the JWCs warn, timely numbering relief will be impossible and consumers and carriers in California will suffer from the lack of numbering resources and the resulting lack of competition.

The JWC October 20, 2003 Comments and supporting data (based on publicly available data from the pooling administrator as of October 20, 2003) previously claimed that the 909 area code did not have sufficient numbering resources to meet demand through February 2005. The JWCs subsequently

³ 2003 NPA Exhaust Analysis, released November 25, 2003, available at <http://www.nanpa.com/pdf/NRUF/Changes from the June 2003 NPA Fcst 11-25-03.pdf>.

prepared an analysis of the pooling administrator's publicly available data to support their Petition for modifying the current implementation schedule.

The JWCs note that there are only eight codes left in the 909 NPA. They argue that these remaining codes will be insufficient to meet the demand for numbers through February 2005, and assuming the most efficient use of adjacent rate centers, exhaust will occur in October 2004 or shortly thereafter. Assuming adjacent rate centers could not be used to meet demand in rate centers with no remaining resources, the JWCs claim that exhaust could occur as soon as March – April 2004, and that NANPA would need 43 full codes to replenish rate centers in order to have any realistic chance of avoiding exhaust in the NPA by February 2005. In any event, the JWCs claim that exhaust is imminent and customers and carriers will be deprived of numbers in the busy season of 2004 unless the Commission grants the modification that is requested in the petition.

The JWCs propose the following modified implementation schedule:

- (a) the permissive dialing period begin on June 6, 2004 instead of July 17, 2004;⁴
- (b) the mandatory dialing period begin on August 30, 2004 instead of October 30, 2004; and (c) the first code be activated on October 30, 2004, instead of February 27, 2005.

The JWCs argue that their proposed modified schedule provides consumers with sufficient notice of the impending area code relief and is otherwise necessary to try and prevent the NPA from exhausting before relief is available and before the busy fourth quarter in 2004. However, given the

⁴ Given that Memorial Day falls on May 31, 2004 and much of the preparation for permissive dialing must be completed over the weekend, the JWCs ask the Commission to modify the implementation schedule so that permissive dialing begin on June 6, 2004.

particularly high consumer demand for new wireless service in the fourth quarter holiday sales season, the JWCs argue it is particularly critical that relief be available by that time. If no new numbering resources become available before February 2005, the JWCs argue, consumers will not be able to select the carriers of their choice at precisely the time that they most demand those services.

Comments of Verizon

Verizon California Inc. (Verizon) supports JWCs' petition for modification of D.03-11-022. In the 909 area code, Verizon is the dominant wireline carrier serving over 70% of the customers. While Verizon supports the petition, it enumerates certain concerns with the timing of specific implementation events. The schedule the JWCs propose would require Verizon to begin implementation of permissive and mandatory dialing of the new area code on a date that is not a Friday. June 6 and August 30, the dates proposed by the JWCs, are a Sunday and Monday, respectively. Generally speaking, beginning implementation of the permissive and mandatory dialing on Fridays at midnight (the implementation period actually begins at 12:01 a.m. Saturday) is less disruptive to both business and residential customers because of reduced weekend activity. Because of these concerns, Verizon has historically begun implementation of permissive and mandatory dialing on Fridays at just after midnight. Verizon therefore recommends implementing permissive and mandatory dialing per the following schedule:

Permissive – 12:01 a.m. on June 12, 2004

Mandatory – 12:01 a.m. on September 11, 2004

The JWCs' propose October 30, 2004 as the first code implementation date. In order to provide customers adequate time to get used to dialing the new area

code. Verizon believes that an interval period closer to two months is desirable for calls to get intercepted if dialed incorrectly. An additional week would also allow Verizon time to finish necessary translations and other work. Therefore, Verizon proposes that first code activations begin on November 6, 2004.

Comments of SBC

Comments in response to the motion were also filed by SBC California (SBC). SBC opposes modification of the schedule and argues that no new facts are presented in the Petition that compel the requested relief. SBC states that the Commission previously considered and rejected the arguments of the JWCs' parties because their two-month dialing period was too short to give customers the opportunity to become accustomed to the new area code. SBC also raises the concern that the JWCs' proposal of less than three months may not give consumers enough time between permissive and mandatory dialing to reprogram equipment to accommodate the new area code. Moreover, SBC has already begun the process of implementation of the new area code, including systems upgrades and customer notifications. SBC thus supports preserving the present schedule.

Discussion

We find no justification to grant the JWCs' Petition for Modification. In their Petition, the JWCs' focus on the potential for carriers running out of numbers before the new area code takes effect. In determining the implementation schedule for the 909 area code split as adopted in D.03-11-022, we did take into account the concern over number exhaust by authorizing the geographic split of the 909 area code to move forward. We recognized parties' proposals, moreover, for a shortened transition period in order to provide for continued availability of numbering resources. We weighed such proposals,

however, against the adverse impacts on the public of not providing sufficient time for customers to reprogram equipment and to make related preparations in anticipation of the new area code. The adopted implementation schedule reflects the weighing of these concerns.

We concluded in D.03-11-022 that any shorter implementation schedule than the one adopted would unduly deny customers a sufficient transition period to complete preparations for the new area code. Nothing in the Petition to Modify warrants a lessening of our concern over the need for adequate time needed for customers to prepare. Certainly, the JWCs have not explained how the implementation schedule could be shortened from February 28, 2005, to October 30, 2004 while avoiding increased disruption, confusion, and frustration to the public trying to prepare for the new area code. The JWCs' proposed shortening of the schedule would deprive consumers of the time that is needed to make adequate preparations for the new area code.

We are not persuaded that the more recent NANPA forecast of exhaust, as referenced by the JWCs' parties, necessitates a change in the implementation schedule. Moreover, the NANPA forecast is subject to uncertainty. We took into account the inherent uncertainty of NANPA forecasts in setting the implementation schedule for the 909 area code. The mere release of a more recent NANPA forecast does not dictate a requirement to revise our previously adopted 909 area code split implementation schedule. The NANPA forecasts are just that, and actual experience may differ with respect to how long numbering resources in each rate center within the 909 area code will actually last. Furthermore, the NANPA forecasts referred to by the JWCs are from November 2003 and NANPA forecasts reflecting the most current data are imminently due. Despite carrier concerns, in the period since D.03-11-022 issued, the number of

whole NXX codes in the 909 area code has remained unchanged at eight NXX codes. The NANPA's previously projected exhaust forecast of the fourth quarter of 2003 did not materialize, even after taking into account consumer demand during the fourth quarter holiday season. In any event, however, the time that customers require to prepare for a new area code is not driven by the code exhaust forecasts produced by NANPA.

Moreover, area code conservation measures implemented in the last half of 2003 have also extended the life of the 909 area code. Since August 2003 when the FCC raised the contamination threshold from 10% to 25%, 476 blocks of numbers have been returned to the 909 pool. Additionally, since November 24, 2003, customers also have the option of porting their current number to a wireless carrier, which has resulted in fewer blocks of phone numbers taken from the pool since December 2003 because customers no longer need to obtain a new telephone number when changing carriers. Since these two conservation measures were implemented, assignment rates in the 909 area code have decreased by 4% while returns to the pool have increased by 127%, in contrast to the eight months preceding this time.⁵ Additionally, in some instances, wireless carriers may be able to use numbers from adjacent rate centers to satisfy certain customer demands.

Ultimately, customers will be able to obtain new numbering resources from their carrier of choice after February 28, 2005, when the 909/951 area code

⁵ See the November Pooling Administration Tracking Reports website: www.nationalpooling.com.

implementation is completed. Until then, the public interest requires that customers be given sufficient time to prepare for the new area code.

The adopted implementation schedule cannot be continually changed to accommodate each new NANPA exhaust forecast. As SBC points out, notices of the schedule for the new area code were sent to its customers in February 2004. It would merely create further customer frustration and potential disruption if yet another notice was sent to customers with different implementation dates. Accordingly, in consideration of the above factors, we deny the Petition to Modify.

Since we are not revising the implementation schedule, the alternative revisions to the schedule suggested by Verizon are moot. The existing implementation schedule adopted in D.03-11-022 shall remain in effect.

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on April 26, 2004 by the JWCs.

In their comments on the Draft Decision, the JWCs do not press further for a truncated implementation schedule for the 909 area code split. Nonetheless, the JWCs ask the Commission to strike certain dicta in the Draft Decision. Specifically, the JWCs take issue with the conclusion that the return of thousand-number blocks to the pool since August 2003 is attributable to the change in the contamination threshold for donations to the number pool from 10% to 25%. The JWC do not dispute that returns of number resources have occurred since August 2003, but deny that any factual basis exists to attribute such returns to the contamination threshold change. Likewise, the JWC argue that there is no factual basis to attribute the return of numbers to the introduction of number

portability for wireless carriers. The JWCs state that although number blocks have varied between a low of 21 blocks to a high of 71 blocks between December 2003 and April 2004, the total number of blocks assigned during this period is actually higher than for the same period between December 2002 and April 2003.

We acknowledge that no direct cause-and-effect relationship can be inferred between the change in the contamination rate for number pool donations and the specific statistics cited concerning returns of numbers. Likewise, we acknowledge that no direct cause-and-effect relationship can be inferred with respect to number portability. Nonetheless, the contamination rate change and availability of number portability still represent positive influences on the availability of number resources in the 909 area code. Everything else being equal, the increased contamination rate tends to make additional number blocks available to the number pool. Likewise, number portability enables a carrier to reuse existing numbers rather than to require new numbering resources when existing customers switch carriers. Thus, we decline to delete references to those factors as influences on efficient number utilization. We do acknowledge, however, that block assignments and block returns are driven by a variety of factors, including existing carrier inventory and anticipated seasonal market demand, as noted by the JWCs.

Assignment of Proceeding

Loretta M. Lynch is the Assigned Commissioner and Thomas R. Pulsifer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. In D.03-11-022, the Commission adopted an implementation schedule for a geographic split of the 909 area code.

2. The adopted schedule in D.03-11-022 was based on a weighing of carriers' claims as to the potential for running out of numbering resources versus the potential for customer disruption and confusion if the transition period was unduly shortened.

3. The more recent NANPA forecast of exhaust, as referenced by the JWCs does not address the question of how much time customers need to prepare for the new area code.

4. Although the most recent NANPA forecast predicts code exhaust prior to the completion of the currently adopted implementation schedule, it is not certain precisely how long numbering resources will actually last in each rate center.

5. Without taking into account the minimum time that customers need to prepare for a new area code, the NANPA forecast, in itself, provides insufficient basis upon which to revise the existing implementation schedule.

6. The JWCs' proposed shortening of the schedule would deprive consumers of the time that is needed to make adequate preparations for the new area code.

7. The latest NANPA forecasts reflecting current data are due to be released imminently.

8. Since the increase in the pooling contamination rate threshold in August 2003 from 10% to 25%, 476 blocks of numbers have been returned to the 909 pool.

9. Since area code conservation measures were implemented in the last half of 2003, the assignment rates in the 909 area code have decreased by 4% and returns to the pool have increased by 127%, in contrast to the eight months preceding conservation measure implementation.

10. While no direct cause-and-effect relationship can be inferred between the change in the contamination rate (or number portability) and specific donations

of numbers, such measures represent positive influences on the availability of number resources in the 909 area code.

11. Actual block assignments and block returns are driven by a variety of factors, including existing carrier inventory and anticipated seasonal market demand.

12. SBC has already begun the process of implementation of the new area code, including systems upgrades and customer notifications of the schedule for permissive and mandatory dialing of the new area code.

13. It would merely create further customer frustration and potential disruption if yet another notice was sent to customers with different area code implementation dates from those previously published.

14. Under the currently adopted schedule, customers will be able to obtain new numbering resources from their carrier of choice after February 28, 2005, when the area code implementation is completed.

Conclusions of Law

1. D.03-11-022 reasonably took into account the arguments of carriers' concerning the potential of a longer schedule on the potential for exhaust of numbering resources and weighed those concerns against the potential disruption to the public from unduly shortening the implementation schedule.

2. Nothing in the Petition to Modify justifies a conclusion that the Commission's weighing of relevant factors in adopting an implementation schedule for the 909 area code split produced an outcome that was not in the public interest.

3. The fact that the JWCs disagree with the manner in which the Commission weighed the evidence in arriving at a final implementation schedule does not constitute grounds for modifying the adopted schedule.

4. The fact that the NANPA produced a subsequent revision in its forecasts of exhaust in the 909 area code does not constitute grounds for modifying the adopted schedule.

5. The JWCs' Petition for Modification should be denied.

6. With a denial of the JWC's Petition for Modification, the alternative revisions to the schedule suggested by Verizon are moot.

O R D E R

IT IS ORDERED that the Petition for Modification of Decision 03-11-022 filed on January 22, 2004, by the Joint Wireless Carriers, is hereby denied.

This order is effective today.

Dated _____, at San Francisco, California.